IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No. 1807 of 2007

Shri Ashok Haribhau Shardul — Petitioner
Vs.
Sau. Shobha Jivaji Dengade @
Shobha Ashok Shardul & anr. — Respondents

Mr.Anilkumar Patil for petitioner.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.
September 27, 2007.

P.C.

. Heard Mr.Anilkumar Patil, the learned counsel for the petitioner - husband who has filed an application under Section 127(3) of Cr.P.C. praying for withdrawal of the order of maintenance granted under Section 125 of Code and the said application is registered as Misc. Application No.461 of 2007. An application at Exhibit 66 came to be filed by the petitioner praying for stay to the payment of maintenance amount during the pendency of Application No.461 of 2007. The said application has been rejected by the impugned order dated 17/8/2007.

. The reason for submitting an application under Section 127(3) of Cr.P.C. is the alleged marriage of the respondent - wife with someone else and that is

an issue which is to be decided after the parties adduce evidence. The learned Judge of the trial Court noted that Misc. Application No.632 of 2002 was filed by the wife under Section 127 of the Code for enhancement and the same was decided on 21/11/2003. It is further noted that the enhanced maintenance amount is being paid by the present petitioner. However, the trial Court noted that whether there was a legal divorce between the parties and whether the second marriage was performed by the wife are the aspects which are to be decided in another case and on the basis of evidence. Under these circumstances, the rejection of the application for stay does not appear to be suffering from any infirmities. However, Mr. Patil expressed an apprehension that if he starts paying the amount of maintenance as directed by the earlier orders and if his application registered as Misc. Application No.461 of 2007 is decided in his favour, there would be no mechanism available to recover the amount already withdrawn from the Court by the respondent - wife. This grounds did not impress the learned Magistrate and he was pleased to dismiss the application praying for stay.

. Though the view taken by the trial Court cannot be termed as perverse, the fact remains that if the petitioner's application is allowed the same would result in stoppage of the maintenance amount.

. Hence it is directed that the pending application registered as Misc. Application No.461 of 2007 be heard and decided on its own merits and without being influenced by any observations made in the impugned order dated 17/8/2007 and at the same time the compensation amount directed by the trial Court shall be continued to be deposited with the trial Court. The learned Chief Judicial Magistrate at Nashik is hereby directed to ensure that Misc. Application No.461 of 2007 is heard and decided as early as possible and preberably before 31st December 2007.

. Petition disposed off in terms of the above directions. Writ to go forthwith to the Court below.

(B.H.MARL